



**TOWN OF LOS GATOS
TOWN COUNCIL POLICY COMMITTEE MEETING
JUNE 25, 2019
TOWN COUNCIL CHAMBERS – 110 EAST MAIN STREET
LOS GATOS, CA
5:00 P.M.**

*Marcia Jensen, Vice Mayor
Barbara Spector, Council Member*

MEETING CALLED TO ORDER

ROLL CALL

VERBAL COMMUNICATIONS *(Members of the public may address the Committee on any matter that is not listed on the agenda. Unless additional time is authorized by the Committee, remarks shall be limited to three minutes.)*

CONSENT ITEMS *(Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Unless there are separate discussion and/or actions requested by the Board/Commission/Committee, staff, or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously. Any member of the Board/Commission/Committee or public may request to have an item removed from the Consent Calendar for comment and action.)*

1. Approve the May 28, 2019 Council Policy Committee Draft Minutes.

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

2. Discuss and provide direction on the land use appeal process.
3. Discuss and provide direction on demolition regulations.
4. Review proposed amendments and legal analysis to the Town Agenda Format and Rules Policy regarding time limits for applicant and appellant presentations and rebuttals.

ADJOURNMENT

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]



**DRAFT
MINUTES OF THE SPECIAL TOWN COUNCIL POLICY COMMITTEE MEETING
MAY 28, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Tuesday, May 28, 2019, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:01 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Joel Paulson, Community Development Director; Holly Zappala, Management Analyst.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

1. Approval of the May 9, 2019 Council Policy Committee Minutes.

Approved.

Joel Paulson, Community Development Director, presented the staff reports for Items 2 through 5.

2. Provide direction on potential amendments to the Hillside Development Standards and Guidelines approval processes.

After discussion, the Committee asked staff to email the Committee a revised draft for review and, upon review and approval of the draft, forward a recommendation to the Planning Commission to approve the amendments to the Hillside Development Standards and Guidelines.

3. Provide direction on potential amendments to the parking lot improvement approval process.

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SUBJECT: DRAFT MINUTES OF THE SPECIAL TOWN COUNCIL POLICY COMMITTEE
MEETING OF MAY 28, 2019

DATE: JUNE 25, 2019

After discussion, the Committee decided to forward a recommendation to the Planning Commission to approve the amendments to the parking lot improvement approval process.

4. Provide direction on potential amendments to the valet parking regulations.

After discussion, the Committee agreed to forward a recommendation to the Planning Commission to approve the amendments to the valet parking regulations and to expand the valet parking regulations beyond the parking assessment district to apply Town-wide.

5. Provide direction on potential amendments to parking assessment district regulations.

After discussion, the Committee forwarded a recommendation to the Planning Commission to approve the amendments to parking district regulations with minor changes to the wording to make it clear that they apply to on-site parking spaces.

The Committee also agreed to amend the regular meeting schedule of the Town Council Policy Committee to meet on the fourth Tuesday of each month at 5:00 p.m. in Town Council Chambers.

ADJOURNMENT

The meeting adjourned at 5:26 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the May 28, 2019 meeting as approved by the Town Council Policy Committee.

/s/ Holly Zappala, Management Analyst



**TOWN OF LOS GATOS
POLICY COMMITTEE REPORT**

MEETING DATE: 6/25/2019

ITEM NO: 2

DATE: JUNE 17, 2019

TO: POLICY COMMITTEE

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: DISCUSS AND PROVIDE DIRECTION ON THE LAND USE APPEAL PROCESS.

RECOMMENDATION:

Discuss and provide direction on the land use appeal process.

BACKGROUND:

The Policy Committee last considered this matter on December 20, 2018. After discussion, the Committee's direction was to forward a recommendation to the Planning Commission to approve the following proposed modifications to the land use appeal process:

- Include a definition of the term interested person in Town Code Sec. 29.10.020, bifurcating the commercial and residential appeal processes;
- Remove the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal in Town Code Sec. 29.20.295 and Sec. 29.20.300; and
- State that an interested person may appeal the decision by the Planning Director on a Minor Residential Development application to the Planning Commission in Town Code Sec. 29.20.480.

DISCUSSION:

On March 27, 2019, the Commission recommended approval of the proposed amendments to the Town Council with modifications to retain the requirement that the Town Council make one of three findings to modify or reverse the decision of the Commission on any appeal, while modifying the second finding in Section 29.20.300(b)(2) to specify that any new information submitted to the Town Council during the appeal process shall be relative to the same project considered by the Commission, with no design changes.

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager

DISCUSSION (continued):

On May 7, 2019, the Town Council considered the Planning Commission recommendation and introduced an Ordinance effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code, but did not include the Planning Commission's recommended changes to Town Code Section 29.20.295 and 29.20.300 regarding the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal. The Town Council referred discussion of potential amendments to Town Code Section 29.20.295 and 29.20.300 back to the Policy Committee.

Section 29.20.295 and 29.20.300 currently read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

- (a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.
- (b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:
- (1) Where there was error or abuse of discretion on the part of the Planning Commission; or
 - (2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
 - (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
- (c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.

DISCUSSION (continued):

(d) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

The Policy Committee's previously recommended changes read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.

~~(b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:~~

~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~

~~(2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or~~

~~(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.~~

~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~

~~(d)~~ The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

DISCUSSION (continued):

The Planning Commission's previously recommended changes read as follows:

Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.

(b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:

(1) Where there was error or abuse of discretion on the part of the Planning Commission; or

(2) The new information, relative to the same project considered by the Planning Commission, that was submitted to the Council during the appeal process that does not include any design changes and was not readily and reasonably available for submission to the Commission; or

(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.

~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~

~~(d)~~ (c) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

Staff looks forward to the discussion and direction of the Policy Committee for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's Offices.



TOWN OF LOS GATOS
POLICY COMMITTEE REPORT

MEETING DATE: 6/25/2019

ITEM NO: 3

DATE: JUNE 17, 2019

TO: POLICY COMMITTEE

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: DISCUSS AND PROVIDE DIRECTION ON DEMOLITION REGULATIONS.

RECOMMENDATION:

Discuss and provide direction on demolition regulations.

BACKGROUND:

The Policy Committee last considered this matter on April 9, 2019. After discussion, the Committee's direction was to forward a recommendation to the Planning Commission to approve the following proposed modifications to the demolition regulations:

- Remove the contiguity requirement; and
- Allow the repair exception for non-historic homes.

Its discussion also included support for one of the additional topics for consideration, which was to add existing chimneys as an exclusion from the existing wall area. Additionally, the Committee requested that the Historic Preservation Committee (HPC) be provided an opportunity to review the proposed modifications relating to historic structures.

On April 24, 2019, the HPC considered the potential changes as they would apply to historic structures. After discussing the matter, the HPC recommended approval of the changes as recommended by the Policy Committee.

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager

BACKGROUND (continued):

On May 22, 2019, the Planning Commission reviewed the proposed Town Code amendments from the Policy Committee. The Planning Commission recommended approval of the amendments with modifications to the Policy Committee's draft ordinance language based on public comments and discussion at the hearing.

In addition to these specific recommended changes, the Planning Commission also expressed support for a reconsideration of larger concepts within the demolition definition, specifically whether interior wall structure (framing) might be considered in place of wall surface material when retaining existing walls, as was mentioned during the public comment period of the hearing.

DISCUSSION:

On June 4, 2019, the Town Council considered the Planning Commission recommendation and introduced an Ordinance effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding demolition regulations. At that meeting, the Town Council also referred discussion of additional amendments to the Policy Committee for further discussion. The specific larger concept for the Policy Committee's consideration is:

- Whether interior wall structure (framing) might be considered in place of wall surface material when retaining existing walls.

Staff looks forward to the discussion and direction of the Policy Committee for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's Offices.



**TOWN OF LOS GATOS
POLICY COMMITTEE REPORT**

MEETING DATE: 06/25/2019

ITEM NO: 4

DATE: JUNE 21, 2019
TO: POLICY COMMITTEE
FROM: ROBERT SCHULTZ, TOWN ATTORNEY
SUBJECT: REVIEW PROPOSED AMENDMENTS AND LEGAL ANALYSIS TO THE TOWN AGENDA FORMAT AND RULES POLICY REGARDING TIME LIMITS FOR APPLICANT AND APPELLANT PRESENTATIONS AND REBUTTALS

RECOMMENDATION:

Provide direction on potential amendments to the Town Agenda Format and Rules Policy regarding time limits for applicant and appellant presentations and rebuttals.

BACKGROUND:

The Town has had an Agenda Format and Rules Policy since 1986. The Policy provides for standard agenda practices and orderly meetings. Up until recently, the Town Council had one set of agenda rules and the Planning Commission had a separate set. On June 20, 2017, the Policy was modified to pertain to all Town Commissions as well as the Town Council.

Since 2001, the Agenda Format and Rules Policy has remained the same regarding the time limits for appellants, applicants, and members of the public. The Policy states:

Public Hearings. Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than ten (10) minutes for all speakers. Appellants and applicants shall be provided no more than five (5) minutes to rebut at the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.

Reviewed by: Town Attorney, Assistant Town Manager, and Community Development Director

BACKGROUND (continued):

Based on a recommendation from the Council Policy Committee, on September 20, 2016 the Town Council considered modifying the time limits to five minutes for each of the presentations and three minutes for each of the rebuttals. The Town Council minutes reflect that a motion was made by Council Member Steve Leonardis for the time limits to remain as is in the existing Policy. The motion was seconded by Mayor Barbara Spector. The motion passed 3/2 with Vice Mayor Marico Sayoc and Council Member Marcia Jensen voting no.

On April 9, 2019, the Policy Committee unanimously approved a motion to modify the Town Agenda Format and Rules Policy regarding time limits for applicant and appellant presentations and rebuttals. The motion was to modify the Public Hearing section to reflect that when there is an appeal, the appellant shall be provided an initial ten (10) minutes and subsequent five (5) minute rebuttal. All other speakers shall be provided three (3) minutes during the public comment period. The Town Attorney expressed concerns about the modification relating to property rights and potential due process violations. The Policy Committee requested the Town Attorney provide a legal analysis of these issues.

DISCUSSION:

During the discussion at the Policy Committee meeting, the members expressed a different interpretation of the Public Hearing section and stated that for previous appeal hearings, the Council had not allowed the applicant a 10-minute presentation and 5-minute rebuttal if the applicant was not the appellant. The Town Attorney disagreed with these statements and provides the Committee with a synopsis of all the non-applicant appeals since 2008 (Videos available online):

9/02/08 – 18 Palm Ave. Appellant -10 min., Applicant - 10 min., Public Comment - 3 min., Applicant -5 min., Appellant -5 min. Prior to the hearing, Mayor Spector confirmed with the Town Attorney the required time limits.

10/20/08 – 14329 Mulberry Drive. Appellant -10 min., Applicant - 10 min., Public Comment - 3 min., Applicant - 5 min., Appellant -5 min. Prior to the hearing, Mayor Spector confirmed with the Town Attorney the time limits.

12/16/13 – 16268 Los Gatos Blvd. Appellant -10 min., Applicant - 5 min., Public Comment - 3 min., Appellant -5 min. Council Member McNutt questioned why the correct process was not being followed. The Town Manager stated that the Mayor can alter the Public hearing process and Mayor Leonardis responded stated this was the way he was going to handle the public hearing.

DISCUSSION (continued):

2/3/14 – 134 Loma Alta Ave. Appellant -10 min., Applicant - 10 min., Public Comment - 3 min., Applicant - 5 min., Appellant -5 min.

1/13/15 - 300 Marchmont Drive. Mayor Jensen decided and announced before the hearing that both Appellant and Applicant would be limited to 3 min with no rebuttal because of the number of speakers.

5/19/15- 15343 Santella Court. Appellant - 10 min., Applicant - 10 min., Public Comment - None Appellant - 5 min.

6/16/15 – 258 Union Ave. Appellant - 10 min., Applicant - 10 min., Public Comment – 3 min., Applicant - 5 min., Appellant- 5 min. Mayor Jensen confirmed with Town Attorney that the Applicant gets 10 min.

12/20/16 - 19 Highland Avenue. Appellant -10 min., Applicant - 10 min., Public Comment - 3 min., Applicant - 5 min., Appellant - 5 min.

3/7/17 - 15680 Gum Tree Lane. 2 Appellants -10 min. each, Applicant - 10 min., there was no Public Comment, 2 Appellants - 5 min. each.

8/7/18 - 223 Massol Avenue. Appellant 10 min., Applicant - 10 min., No Public Comment, Appellant - 5 min.

Pursuant to the Policy Committee’s direction, the following are the proposed amendments to the Agenda Format and Rules Policy regarding the time limits for appellants, applicants, and members of the public.

Public Hearings. Presentations during the Public Hearings portion of the agenda by appellants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than ten (10) minutes for all speakers. Appellants shall be provided no more than five (5) minutes to rebut at the end of the public hearing. Other members of the public, including any non-appellant applicant testifying at public hearings, shall be limited to no more than three (3) minutes during the public comment portion of the hearing.

It is the Town Attorney’s legal opinion that the proposed amendments could possibly violate federal and state due process laws and lead to unnecessary legal challenges.

DISCUSSION (continued):

The Federal Due Process Clause imposes constraints on governmental decisions that deprive individuals of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments. The California Due Process Clause guarantees both fair and unprejudiced decision-making and requires being treated with respect and dignity. Code of Civil Procedure section 1094.5(b) also creates a statutory right to a fair hearing, which must be conducted before an impartial tribunal. *Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152.*

Also noteworthy is the California Administrative Procedures Act (the “APA”), which provides detailed requirements that apply to adjudicative proceedings of state agencies. Govt Code §§11400, et seq.). Although the APA is expressly inapplicable to cities and other local agencies unless its provisions have been adopted by the local jurisdiction, courts have looked to the APA for guidance in analyzing quasi-judicial issues involving cities that have not adopted it. Govt Code §11410.30(b).

The Due Process Clauses and Laws require that both the process and the result of governmental decision-making be equitable and ensures that decisions are reached in a fundamentally fair manner. The most fundamental requirements of procedural due process are: (1) adequate notice; and (2) an opportunity to be heard before a fair and impartial hearing body. *Horn v. County of Ventura (1979) 24 Cal.3d 605, 612.* In *Cohan v. City of Thousand Oaks, 35 Cal. Rptr.2d 782 (2d Dist. 1994)* the court held that a governing body, by waiving notice requirements and limiting the developer’s opportunity to speak, violated due process. The Court in *Cohan* stated:

Simply because Albert Cohan was familiar with the objections to the project does not satisfy due process. The Council ignored the very laws and regulations meant to ensure fair process concerning property development conflicts. Ironically, the Council's very attempt to protect the due process rights of interested citizens cavalierly overrode those same rights of the Cohans. This stands due process on its head.

A party’s right to challenge and rebut any evidence presented against it, particularly evidence presented for the first time at a hearing, can help preserve key features of a fair hearing. *CEB California Land Use Practice, §20.35; Vollstedt v. City of Stockton (1990) 220 Cal.App.3d 265, 275.* Therefore, it is the Town Attorney’s legal opinion that allowing additional time to an Appellant, while limiting the time to the Applicant/Property Owner, and providing no opportunity for rebuttal, would not accord an Applicant/Property Owner a fair opportunity to present evidence supporting their position and rebut evidence and be an unfair hearing as required under both federal and state law.

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SUBJECT: POTENTIAL AMENDMENTS TO THE TOWN AGENDA FORMAT AND RULES
POLICY

DATE: JUNE 21, 2019

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Community Development Department.